

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2009-07

FINDINGS AND DECISION AUTHORIZING ISSUANCE OF
ENCROACHMENT PERMIT NO. 18159-2
NATOMAS CROSS CANAL SOUTH LEVEE PHASE II IMPROVEMENTS
AND
ENCROACHMENT PERMIT NO. 18159-3
SACRAMENTO RIVER EAST LEVEE PHASE I IMPROVEMENT PROJECT
REACHES 1 THROUGH 4A
SACRAMENTO AREA FLOOD CONTROL AGENCY
SUTTER AND SACRAMENTO COUNTIES

WHEREAS, the Sacramento Area Flood Control Agency (“SAFCA”) has begun a multi-year Natomas Levee Improvement Program; and

WHEREAS, SAFCA as lead agency under the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* (“CEQA”) prepared an Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project (“EIR”) (incorporated herein by reference and available at the Central Valley Flood Protection Board offices or SAFCA offices); and

WHEREAS, SAFCA, as lead agency, certified the EIR, adopted mitigation measures and a Mitigation Monitoring Reporting Plan (“MMRP”) (incorporated herein by reference and available at the Central Valley Flood Protection Board or at SAFCA), approved findings and a statement of overriding considerations pursuant to CEQA and the CEQA Guidelines (incorporated herein by reference); and approved the Project as identified in Alternative 1 of the EIR; and

WHEREAS, SAFCA submitted Application No. 18159-2 to the Reclamation Board on November 7, 2007, and submitted an updated application to the Central Valley Flood Protection Board on January 13, 2009. The application proposes to place fill to raise and realign approximately 28,750 linear feet of levee and to construct approximately 19,050 linear feet of seepage cutoff wall along the left (south) project levee.

WHEREAS, SAFCA submitted Application No. 18159-3 to the Reclamation Board on November 7, 2007, and submitted an updated application to the Central Valley Flood Protection Board on January 13, 2009. The application proposes to construct approximately 11,000-linear-feet of seepage cutoff wall at 20 to 63-feet in depth, construct approximately 8,100-linear-feet of seepage berm varying in width from 100 to 300-feet-wide, and construct a 18,800-linear-foot setback levee 3-foot-higher than the existing levee on the landside slope of the existing left (east) bank levee.

WHEREAS, on January 1, 2008, the new Central Valley Flood Protection Board came into being, and succeeded to all of the responsibilities of the former Reclamation Board; and

WHEREAS, on January 18, 2008, the Central Valley Flood Protection Board held a hearing on Application 18159-2, adopted CEQA Findings and a Statement of Overriding Considerations, and conditionally approved the proposed permit subject to 33 U.S.C. 408 approval by the U.S. Army Corps of Engineers.

WHEREAS, on March 21, 2008, the Central Valley flood Protection Board held a hearing on Application 18159-3, adopted CEQA Findings and a Statement of Overriding Considerations, and conditionally approved the proposed permit subject to 33 U.S.C. 408 approval by the U.S. Army Corps of Engineers.

WHEREAS, since the events above, SAFCA proposed modifications to the Phase 2 Project.

WHEREAS, SAFCA prepared a Supplement to the Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project – Phase 2 Project (State Clearinghouse No. 2007062016) (“SEIR”), which analyzes the modifications to the Phase 2 Project, which are fully described in Chapter 2 of the November 2008 Draft SEIR, as amended by the January 2009 Final Supplement to the Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project – Phase 2 Project (together, the “Final SEIR”). The SEIR is available at http://www.safca.org/Programs_Natomas.html and <http://www.cvfpb.ca.gov/meetings/2009/03-27-2009.cfm> or at SAFCA and Board offices.

WHEREAS, the Draft SEIR was published on November 18, 2008, for a 45-day public review period that ended on January 2, 2009. In addition, members of the public were invited by formal public notice to submit comments on the Draft SEIR in testimony at a public hearing held for that purpose on December 11, 2008. Additional public comments were received at this hearing.

WHEREAS, the Final SEIR was published in January, 2009. SAFCA also prepared a Mitigation Monitoring and Reporting Program (MMRP). On January 29, 2009, the SAFCA Board certified the Final SEIR, made CEQA Findings, and adopted a Statement of Overriding Considerations and approved the modifications to the Phase 2 project (Exhibit A to SAFCA Resolution 09-022).

WHEREAS, the Director of Civil Works for the U.S. Army Corps of Engineers, based on his review of the 33 U.S.C. 408 recommendation package, the Final Environmental Impact Statement, the views of other Federal, State, and local agencies, and input from the public, found that the recommended Natomas Levee Improvement Program Phase 2 project to be technically adequate and not an impairment to the usefulness of existing Federal project; to be in accordance with environmental statutes; to be without significant adverse hydraulic impacts; and to not be injurious to the public interest.

WHEREAS, the Director of Civil Works for the U.S. Army Corps of Engineers approved the request under 33 U.S.C. 408 made by the State of California Central Valley Flood Protection Board on behalf of SAFCA to alter the Sacramento River Flood Control Project by construction of the Natomas Levee Improvement Program Phase 2 Project.

WHEREAS, the Central Valley Flood Protection Board has conducted a hearing and has reviewed the updated applications, the Reports of its staff, the documents and correspondence in its file, and the environmental documents prepared by SAFCA;

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact.

1. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report.
2. The Board has reviewed the Figures, Attachments, and References listed in the Staff Report.

CEQA Findings.

3. The Central Valley Flood Protection Board, as a responsible agency, has independently reviewed the analysis in the SEIR, MMRP, and the findings prepared by the lead agency, SAFCA, and has reached its own conclusions regarding them.
4. The Central Valley Flood Protection Board, after consideration of the SEIR, and SAFCA findings, adopts the project description, analysis and findings in the SEIR and SAFCA Findings which are relevant to activities authorized by issuance of final encroachment permits consistent with Draft Permit No. 18159-2, Natomas Cross Canal South Levee Phase II Improvements, and Draft Permit No. 18159-3, the Sacramento River East Levee Phase I Improvement Project, Reaches 1 Through 4A.
5. **Findings regarding significant impacts.** Pursuant to CEQA Guidelines sections 15096(h) and 15091, the Central Valley Flood Protection Board determines that the SAFCA Findings, attached to the Staff Report, and incorporated herein by reference, summarize the SEIR's determinations regarding impacts of the modifications to the Phase 2 Project before and after mitigation. Having reviewed the SEIR and the SAFCA Findings, the Central Valley Flood Protection Board makes its findings as follows:

a. Findings regarding Significant and Unavoidable Impacts.

The Central Valley Flood Protection Board finds that the modifications to the Phase II Project may have the following significant, unavoidable impacts, as more fully described in the SEIR and the SAFCA Findings. Mitigation has been adopted for each of these impacts,

although it does not reduce the impact to less than significant. The impacts and mitigation measures are set forth in more detail in the SEIR and SAFCA Findings.

- A. Impact 3.4-b. Potential Construction Impacts on Cultural Resource CA-SAC-485/H

Mitigation Measure 3.4-b: Avoid Ground Disturbance near Known Archeological Site CA-Sac-485/H to the Extent Feasible and Prepare and Implement a Historic Properties Treatment Plan.

- B. Impact 3.4-c. Damage to or Destruction of Other Identified Prehistoric Cultural Resources

Mitigation Measure 3.4-c: Evaluate NLIP-7 and NLIP-22. If the Resources are Eligible, Avoid Disturbance to the Extent Feasible, and Prepare and Implement a Historic Properties Treatment Plan.

- C. Impact 3.4-d. Damage to or Destruction of Previously Undiscovered Cultural Resources

Mitigation Measure 3.4-d: Conduct Additional Backhoe and Canine Forensic Investigations As Appropriate

- D. Impact 3.4-e. Damage to or Destruction of Previously Undiscovered Interred Human Remains

Mitigation Measure 3.4-e: Halt Work Within 50 Feet of the Find, Notify the County Coroner and Most Likely Descendant, and Implement Appropriate Treatment of Remains

- E. Impact 3.5-a. Generation of Temporary, Short-Term Construction Noise

Mitigation Measure 3.5-a: Implement Noise-Reducing Construction Practices, Prepare and Implement a Noise Control Plan, and Monitor and Record Construction Noise Near Sensitive Receptors.

Finding: The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the SAFCA Findings, but that each of the above impacts remains significant after mitigation. Such mitigation measures are within the responsibility of another agency, SAFCA, and SAFCA can and should implement the described mitigation measures. Specific economic, legal, social, technological or other considerations, rendered infeasible mitigation or alternatives that would have reduced these impacts to less than significant.

b. Findings regarding significant impacts that can be reduced to less-than significant.

The Final SEIR identifies the following significant impacts associated with the modifications to the Phase 2 Project. These impacts are reduced to a less-than-significant level by mitigation measures identified in the Final SEIR and incorporated into the project. It is hereby determined that the impacts addressed by these mitigation measures will be mitigated to a less-than-significant level or avoided by incorporation of these mitigation measures into the project.

A. Impact 3.2-a. Possible Effects on Water Quality from Stormwater Runoff from Garden Highway Drainage Outlets to the Sacramento River

Mitigation Measure 3.2-a: Implement Standard Best Management Practices and Comply With NPDES Permit Conditions.

B. Impact 3.3-a. Loss of Sensitive Habitats

Mitigation Measure 3.3-a: Minimize Effects on Sensitive Habitats; Develop and Implement a Habitat Management Plan to Ensure Compensation for Unavoidable Adverse Effects; Comply with Section 404, Section 401, and Section 1602 Permit Processes; and Implement all Permit Conditions.

C. Impact 3.3-b. Disturbance and Loss of Giant Garter Snake Habitat

Mitigation Measure 3.3-b: Minimize the Potential for Direct Loss of Giant Garter Snake Individuals, Develop a Management Plan in Consultation with USFWS and DFG, and Obtain Incidental Take

D. Impact 3.3-c. Loss of Swainson's Hawk Habitat and Potential Disturbance of Nests

Mitigation Measure 3.7-f: Minimize Potential Impacts on Swainson's Hawk, Monitor Active Nests during Construction, Develop a Management Plan in Consultation with DFG, and Obtain Incidental Take Authorization.

E. Impact 3.4-a. Changes to Elements of RD 1000, which Consists of a Rural Historic Landscape District That is Eligible for Listing on the NRHP

Mitigation Measure 3.4-a: Incorporate Mitigation Measures to Documents Regarding Any Elements Contributing to RD 1000 and Distribute the Information to the Appropriate Repositories.

Finding. The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the

SAFCA Findings, which describe the mitigation measures for each impact in detail. With such mitigation, each of the significant impacts will be reduced to less-than-significant. Such mitigation measures are within the responsibility of another agency, SAFCA, and SAFCA can and should implement the described mitigation measures.

6. As a responsible agency, the Central Valley Flood Protection Board has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. The Board confirms that it has reviewed the MMRP, and confirmed that SAFCA has adopted and committed to implementation of the measures identified therein. The Board agrees with the analysis in the MMRP and confirms that there are no feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. None of the mitigation measures in the MMRP require implementation by the Board directly, although continued implementation of the MMRP shall be made a condition of issuance of the Encroachment Permit. However, the measures in the MMRP may be modified to accommodate changed circumstances or new information not triggering the need for subsequent or supplemental analysis under CEQA Guidelines sections 15062 or 15063.

7. **Statement of Overriding Considerations.** Pursuant to CEQA Guidelines sections 15096(h) and 15093, the Board has balanced the economic, social, technological and other benefits of the Project described in application Nos. 18159-2 and 18159-3, against its significant and unavoidable impacts, listed in paragraph 5 (a) above, and finds that the benefits of the Project outweigh these impacts and they may, therefore, be considered “acceptable”.

The Central Valley Flood Protection Board finds that there is an immediate need to protect the people and property at risk in the project area. The Natomas Basin floodplain is occupied by over 83,000 residents and \$10 billion in damageable property. The area is presently vulnerable to flooding in a less than 100-year flood event along the Sacramento River or American River. The Natomas Basin is a deep floodplain and depending on the circumstances, flood depths in the Natomas Basin could reach life-threatening levels. The disruption in transportation that would result from a major flood would affect the Sacramento International Airport, interstate and state highways, and rail service.

The health and safety benefits of the project, which would significantly reduce the risk of an uncontrolled flood in the Natomas Basin that would result in a catastrophic loss of property and threat to residents of the area, outweigh the remaining unavoidable environmental impacts.

8. **Custodian of Record.** The custodian of the CEQA record for the Board is its Executive Officer, Jay Punia, at the Central Valley Flood Protection Board Offices at 3310 El Camino Avenue, Room LL40, Sacramento, California 95821.

Findings pursuant to Water Code section 8610.5

9. **Evidence Admitted into the Record.** The Board has considered all the evidence presented in this matter, including the original and updated applications, past and present Staff Reports and attachments, the original Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project (Draft and Final Versions), the Supplement to the NLIP EIR (SEIR) (Draft and Final versions), the original and supplemental MMRP, the SAFCA Findings, the Corps of Engineers' Investigation Results on the Natomas Levees, transcripts of evidentiary hearings on permit applications 18159-2 and 18159-3 held at the Central Valley Flood Protection Board meetings on December 21, 2007, January 18, 2008, March 21, 2008 and March 27, 2009. The Board has also considered evidence from the U.S. Army Corps of Engineers presentation at the January 2008 meeting, and all letters and other correspondence received by the Board and in the Board's files related to this matter.

The custodian of the file is Executive Officer Jay Punia at the Central Valley Flood Protection Board.

10. **Best Available Science.** In making its findings, the Board has used the best available science relating to the issues presented by all parties. On the important issue of hydraulic impacts and the computed water surface profiles, SAFCA used the UNET one-dimensional unsteady flow model developed by the USACE for the Sacramento-San Joaquin Comprehensive Study. The model is considered by many experts as one of the best available scientific tools for the purpose of modeling river hydraulics, including flood control system simulations and water surface profile computations.

11. **Effects on State Plan of Flood Control.** This project has positive effects on the State Plan of Flood Control as it includes features that will provide 200-year protection to the Natomas Basin. The Board found (through prior Resolutions 2008-2 and 2008-4) that the hydraulic impacts of the proposed Natomas Cross Canal and Sacramento River East Levee Improvements, as computed using the UNET model, on the entire State Plan of Flood Control, are not significant. Those findings included landside levee raises, adjacent setback levees, seepage berms, and drainage collection systems. The Board now also finds that no changes in project design from the 60 percent to 100 percent levels result in negative hydraulic impacts on the entire State Plan of Flood Control.

On January 21, 2009 the U.S. Army Corps of Engineers issued "Record of Decision, 408 Permission and Department of the Army 404 Permit to Sacramento Area Flood Control Agency for the Natomas Levee Improvement Project". This approval, pursuant to U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408 included the Natomas Cross Canal South Levee Phase 2 project (included in encroachment permit 18159-2) and the Sacramento River East Levee Phase 1 project (included in encroachment permit 18159-3). This permission was granted based upon Corps determination that such alterations will not be injurious to the public interest and will not impair the usefulness of the Sacramento River Flood Control Project.

In California Statutes of 2007, Chapter 641 (SB276), the Legislature found and declared that “The projects authorized in Section 12670.14 of the Water Code [which includes the Natomas Cross Canal South Levee Phase II Improvements and the Sacramento River East Levee Phase I Improvement Project, Reaches 1 Through 4A work] will increase the ability of the existing flood control system in the lower Sacramento Valley to protect heavily urbanized areas within the City of Sacramento and the Counties of Sacramento and Sutter against very rare floods without altering the design flows and water surface elevations prescribed as part of the Sacramento River Flood Control Project or impairing the capacity of other segments of the Sacramento River Flood Control Project to contain these design flows and to maintain water surface elevations. Accordingly, the projects authorized in that section will not result in significant adverse hydraulic impacts to the lands protected by the Sacramento River Flood Control Project and neither the Central Valley Flood Control Board nor any other state agency shall require the authorized projects to include hydraulic mitigation for these protected lands.”

12. **Effects of reasonably projected future events.** The impact of climate change on future hydrology and floodplain conditions is discussed in the original Draft EIR at pages 3.11-12 to 3.11-13. An increase in precipitation due to climate change “could lead to increased potential for floods because water that would normally be held in the Sierra Nevada until spring could flow into the Central Valley concurrently with winter storm events” thus placing more pressure on California’s levee/flood control system. The impact of greenhouse gases is acknowledged and discussed in the DEIR in Section 4.2.5.6 at page 4-18. Proposed development projects in the Natomas Basin are discussed beginning on page 4-11 of the DEIR. In addition, the DEIR discusses the Master Plan for the Sacramento International Airport., beginning on page 4-9 of the DEIR. Thus, improved levees will not only benefit existing residents, they will permit additional planned development, and airport expansion.

Other Findings/Conclusions regarding Issuance of the Permit.

13. Based on the foregoing, and particularly on the evidence that the condition of the existing Natomas levees poses an unacceptable risk to life and property, the Board finds and concludes that the issuance of the Encroachment Permits Nos. 18159-2 and 18159-3 for the Natomas Cross Canal South Levee Phase II Improvements and Sacramento River East Levee Phase I Improvement Project, Reaches 1 Through 4A, as modified, is in the public interest.

14. This resolution shall constitute the written decision of the Central Valley Flood Protection Board in the matter of Permits Nos. 18159-2 and 18159-3.

Approval of Permits.

15. Based on the foregoing, the Central Valley Flood Protection Board hereby approves the modifications to the NLIP Phase II Project and approves issuance of Encroachment Permits in substantially the form provided as Attachments A and B of the Staff Report.

16. The Board directs the Executive Officer to take the necessary actions to prepare and execute the permits and related documents and to prepare and file a Notice of Determination under the California Environmental Quality Act for the Natomas Levee Improvement Program, Landside Improvements Project, Natomas Cross Canal South Levee Phase II Improvements and Sacramento River East Levee Phase I Improvement Project, Reaches 1 Through 4A.

DATED:

THE CENTRAL VALLEY FLOOD
PROTECTION BOARD OF THE
STATE OF CALIFORNIA

By _____
Benjamin F. Carter
President

By _____
Maureen R. Doherty
Secretary